

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVEN ALLEN McGEE,

Movant,

v.

CASE NO. 1:08-cv-499

UNITED STATES OF AMERICA,

HON. ROBERT HOLMES BELL

Respondent.

/

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Movant's motion to vacate his sentence. (Dkt. No. 38.) Movant argues that his § 2255 motion should be granted, and sentence vacated, because the government failed to respond to Movant's § 2255 motion within the time frame originally provided by this Court. The Court originally ordered the government to submit its response by November 24, 2009, but it extended the deadline to January 5, 2010, per request by the government. Movant contends that the government's response, filed on January 5, 2010, should be disregarded, and his § 2255 motion granted, because the government missed the original November 24, 2009, deadline. The Court retains discretion to determine the date on which the government must submit its response. *See* Rules Governing Section 2255 Proceedings 4(b) ("If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other

action the judge may order.”); *id.* at Rule 5 advisory committee’s note (“[Section] 2255 does not specifically call for a return or answer by the United States Attorney or set any time limits as to when one must be submitted.”); *see also* W.D. Mich. LCivR 7.1(c) (“In its discretion, the Court may in a particular case shorten or enlarge any time limit or page limit established by these rules, with or without prior notice or motion.”). Because the government filed its response within the January 5, 2010, deadline, the response was timely, the Court properly considered it, and Movant is not entitled to relief on this ground.

Movant also asks the Court to grant an evidentiary hearing on Movant’s § 2255 motion. The Court must grant a hearing on a 2255 motion “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” 28 U.S.C. § 2255(b). Movant’s motion, combined with his two briefs in support totaling approximately 160 pages and all other records of the case, conclusively show that Movant is entitled to no relief. Thus, Movant is not entitled to a hearing.

Finally, Movant has cited no authority that would entitle him to be released on bond while his § 2255 motion is pending. Accordingly,

IT IS HEREBY ORDERED that Movant’s motion to vacate his sentence (Dkt. No. 38) is **DENIED**.

Dated: January 21, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE